

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
THOMASVILLE DIVISION**

BILLY EUGENE BROWN,	*	
Petitioner,	*	CASE NO. 6:05-CV-54 HL
		28 U.S.C. § 2255
VS.	*	
		CASE NO. 6:03-CR-16 HL
UNITED STATES OF AMERICA,	*	
Respondent.	*	

**ORDER DENYING CERTIFICATE OF APPEALABILITY
AND
MOTION TO PROCEED IN FORMA PAUPERIS**

Petitioner Brown filed a Notice of Appeal (Doc. 54) of this Court's Judgment denying his Motion To Vacate, Set Aside, or Correct his Sentence Pursuant to 28 U.S.C. § 2255 (Doc. 52). The Report and Recommendation of the United States Magistrate Judge (Doc. 49) was adopted on November 20, 2006, without objection from Petitioner Brown. Brown also filed a motion to proceed on appeal *in forma pauperis* (Doc. 55).

Although Petitioner Brown did not file an Application For Certificate of Appealability, his Notice of Appeal will be treated as such. *See* Fed. R. App. P. 22(b). However, a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). Brown's claims in his Motion To Vacate, Set Aside, or Correct his Sentence were found to be both factually and legally without merit. The failure to object to the Magistrate Judge's findings of fact

prohibits an attack on appeal of the factual findings adopted by the district court except on grounds of plain error or manifest injustice. *United States v. Slay*, 714 F.2d 1093, 1095 (11th Cir. 1983).

Petitioner Brown has failed to make a substantial showing of the denial of a constitutional right. His Application for Certificate of Appealability is therefore DENIED.

The petitioner attached to his Motion to proceed on appeal *in forma pauperis* a prison account statement wherein the authorized institution officer certified that Petitioner Brown's average monthly balance for the past six months was \$552.46 as of November 30, 2006, with total deposits of \$3,567.76 for the last six months. Petitioner is found to be financially able to pay the required filing fee for his appeal. Petitioner's Motion to proceed *in forma pauperis* is therefore DENIED.

SO ORDERED this 22nd day of January, 2007.

s/ *Hugh Lawson*
HUGH LAWSON